IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M.No.3273-C of 2002 and
R.S.A. No.1622 of 2002

DATE OF DECISION: 24.07.2006

M.C.LUDHIANA

...APPELLANT

VERSUS

M/S CHEVRON INTERNATIONAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr.Harsh Aggarwal, Advocate
for the appellant.
Mr.Vikas Sagar, Advocate.

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MAHESH GROVER, J.

C.M.No.3273-C of 2002

For the reasons stated in the application, the delay of 52 days in filing the appeal is condoned.

C.M. stands disposed of.

R.S.A. No.1622 of 2002

The plaintiff-respondent filed a suit for perpetual injunction seeking to restrain the appellants from realizing the composition fee amounting to Rs.80,770/- on account of property No.B-XVIII-979/2. The case of the plaintiff-respondent was that he was the owner of the building upon which he had raised the construction according to the sanctioned plans. The appellant was raising illegal demand of Rs.80,770/- on account of composition fee and was certain to demolish the property forcibly, in case

composition fee was not paid. The suit was resisted by the appellant stating that Civil Court has no jurisdiction in the matter as on checking, deviations were found in the construction and due notice under Section 269 (1) of the Punjab Municipal Corporation Act was served in August, 1984. Because of the deviations in the construction, composition fee was assessed at Rs.80,770/- after due verification. The trial Court, on the pleadings of the parties, framed as many as 6 issues which are as follows:-

1."Whether plaintiff had raised construction according to the sanctioned site plan and defendant Corporation cannot demolish the same?OPP
2. Whether the plaintiff is entitled to injunction prayed for on the allegations made in the plaint?OPP

3. Whether there is un-authorized construction and defendant Corporation had already issued notices?OPD

4. Whether the jurisdiction of the Civil Court is barred?OPD

5. Whether defendant Corporation cannot demand composition fee?OPD

6. Relief".

The trial Court dismissed the suit of the respondent and in appeal the finding of the trial Court was upset. The appellant has filed the present Regular Second Appeal and the foremost contention which has been raised by the learned counsel for the appellant is that the Civil Court had no jurisdiction to go into the matter in view of the specific provision of Section 149 of the Punjab Municipal Corporation Act. In support of his contention, learned counsel for the appellant has relied upon a judgment of Hon'ble Supreme Court reported as **Munshi Ram & others vs. M.C.Chhehrata, AIR 1979 S.C., 1250** wherein it had been held that where a special remedy exists then a person cannot resort to remedy under the general law.

The observations of Hon'ble Supreme Court are as follows:-

> "Where Special remedy is provided, general remedy of suit is barred. Punjab Municipal Act SS 84 & 86. It is well- recognized that where a Revenue Statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this principle, it is clear that Sections 84 & 86 of the Punjab Municipal Act bar by inevitable implication the jurisdiction of the Civil Court where the general grievance of the party relates to an assessment of the principle of assessment under this Act".

Learned counsel for the respondent has contended that the jurisdiction of the Civil Court was not barred. In support of his contention, he relied upon a judgment of this Court reported as **Roshan Lal Vs. Municipal Committee Nabha, 1996(3) RCR (Civil), 439.**

I have heard learned counsel for the parties and also perused the record. Perusal of the record shows that on facts, some deviation was found in the construction raised by the respondent and on account of which a show cause notice was issued and the composition fee was assessed at Rs.80,770/-. The action had been taken by the Municipal Corporation in accordance with the provisions of the Municipal Corporation Act and in case the respondent had any grievance, the same could have been rectified by resorting to the procedure as is enshrined in the Act. The learned lower appellate Court had gone wrong when it conferred jurisdiction on the Civil Court in the said matter. It has been observed by Hon'ble Supreme Court in Munshi Ram's case (supra) as well as by Full Bench of this Court in **Kelash**

Nath and others Vs. Municipal Committee, Batala, AIR 1962 Punjab, 389 that under the law which is a special law if remedy is provided then the Civil Court has no jurisdiction.

The substantial question of law is that in view of the specific provision under Section 149 of the Act whether Civil Court has any jurisdiction or not?

The answer is in the negative.

Where a special remedy is provided, the general remedy of the suit is barred. To a similar effect is the judgment of the Full Bench reported as **Kelash Nath's case (supra).** The observation of Full Bench of this Court is as follows:-

> "A suit for an injunction to restrain the Municipal Committee from levying octroi duty at the rate of Rs.2/- per maund on imported cane under the residuary item No.122 of the Schedule to the Punjab Municipal Act on the allegation that the goods are only liable to pay octroi duty at the rate of annas 2 per maund either under item No.105 or 110 of the Schedule is barred from the cognizance of civil court by virtue of the provisions of Sections 84 & 86 of the Punjab Municipal Act. When the matter for decision is whether the octroi should be levied under one item or the other of the octroi schedule on particular goods and the assessing authority comes to the conclusion that it is leviable under a particular item i.e., item 122 in the present case, it cannot possibly be said that the action of the assessing authority is in excess of or in contravention of the powers conferred on it by the statute. As it is a clear case of mistake and as no question of jurisdiction is involved, the aggrieved party must seek his remedy under Section 84 which provides

> the forum for appeal and reference in the matter of a wrong assessment. If the committee persists in perpetuating that mistake it may even be open to the plaintiffs to bring that matter up to High Court under Article 226 of the Constitution but the Civil Courts cannot entertain and decide the present suit. AIR 1940 Lah 377 (FB), applied. Obiter dicta in AIR 1949 EP 18, held not correct. AIR 1960 Punj. 561, Dist. R.F.A.No.30 of 1952 D/- 16.4.1959 (Punj.), Criticised".

The judgment cited by the learned counsel for the respondent, therefore, does not come to his rescue as it is not applicable to the facts of the present case. In this judgment, it was held that the Civil Court's jurisdiction shall not be barred if power has been exercised by a person not authorized under the Act or that the matter was beyond the jurisdiction of the Court under the Act. A perusal of the facts, however, shows that this was not the case of the respondent. The jurisdiction of the competent authority under the Municipal Law had been rightly exercised and the dispute only was whether the respondent was liable to pay the amount or not.

In view of this, the jurisdiction of the Civil Court was clearly barred.

In view of the reasons detailed above, it is held that the Civil Court had no jurisdiction to go into the matter. Consequently, the appeal is allowed and the order of the learned lower appellate Court is set aside and suit of the respondent shall stand dismissed.

July 24, 2006 (MAHESH GROVER)
seema JUDGE